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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Communications Assistance for)
Law Enforcement Act)

CC Docket No. 97-213

To: The Commission

PETITION FOR EXTENSION OF COMPLIANCE DATE

Paging Network, Inc. ("PageNet"), by its attorneys and pursuant to Section 107(c) of the Communications Assistance For Law Enforcement Act ("CALEA"),¹ hereby petitions for a two year extension of time to comply with the assistance capability and capacity requirements of Section 103 of CALEA. 47 U.S.C. § 1002. In support of this Petition, the following is respectfully shown:

I. Introduction

PageNet operates numerous traditional and advanced paging, narrowband PCS, and dispatch Special Mobile Radio ("SMR") networks. PageNet is a commercial mobile radio services ("CMRS") provider and is, therefore, a "telecommunications carrier" as defined in Section 102(8) of CALEA.² As a telecommunications carrier, PageNet is required to meet the Section 103 capability requirements for equipment, services or facilities installed or deployed after January 1, 1995. The deadline for meeting these requirements is October 25, 1998. As of

¹ 47 U.S.C. § 1006(c).

² 47 U.S.C. § 1001(8)(B)(i).

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the date of this Petition, only a CALEA “capability” standard for traditional paging has been established.³

II. Scope Of The Extension

On May 4, 1998, the paging industry adopted a CALEA capability standard for traditional paging systems and services. The standard provides for the use of “clone” pagers in response to valid interception requests from law enforcement agencies. A clone pager is simply a duplicate of the target’s pager. The clone pager simultaneously, and invisibly, provides law enforcement with the same messages that are received by the target’s messaging unit. Clone paging has been the standard manner in which most paging carriers respond to interception requests from law enforcement.

Under the traditional paging CALEA standard, PageNet’s traditional paging networks and services are CALEA compliant today. This accounts for over 95 percent of PageNet’s current services. However, because the standard is newly adopted and may be subject to some modification⁴, by this Petition, PageNet seeks an extension of the CALEA compliance deadline for all of its system and services, including traditional and advanced paging, narrowband PCS and SMR.⁵

³ *CALEA Specification for Traditional Paging*, adopted through Personal Communications Industry Association. This standard does not cover advanced paging, including narrowband PCS service, or SMR systems and services. It should be noted that a paging “capacity” standard has not been established. See note 6 *infra*.

⁴ The standard adopted for the two-way voice systems through the Telecommunications Industry Association has been challenged before the FCC by law enforcement and privacy groups. See Public Notice PA 98-762.

⁵ The Commission may wish to consider whether it should additionally declare that traditional paging carriers have a safe harbor under CALEA if they comply with the *CALEA Specification for Traditional Paging*. See 47 U.S.C. § 1006(a).

III. Compliance Is Not Reasonably Achievable

Section 107(c) of CALEA provides that a telecommunications carrier may petition the Commission for an extension of the deadlines for complying with the Section 103 assistance capability requirements. 47 U.S.C. § 1006(c)(1). After consultation with the Attorney General, the Commission may grant an extension if compliance with the assistance capability requirements is not reasonably achievable through application of technology available within the compliance period. 47 U.S.C. § 1006(c)(2). As shown below, under Section 107(c) of CALEA, PageNet is entitled to an extension of the compliance deadline.

A. The Section 103 CALEA Capability Standards For Advanced Paging, Narrowband PCS and SMR have Not Been Established

To date, no final CALEA capability standards for advanced paging, narrowband PCS and SMR have been established. Since the enactment of CALEA, industry associations have been working with law enforcement in order to develop CALEA capability standards for two-way voice networks, but it would appear that law enforcement agencies have not had adequate time or resources to assist in establishing a CALEA capability standard for paging, narrowband PCS, and SMR.⁶ There are many reasons why law enforcement would wish to focus their resources

⁶ For example, law enforcement excluded paging, narrowband PCS, and SMR from its *Final Capacity Notice* stating:

CALEA applies to all telecommunications carriers as defined in section 102(8). Capacity notices *will eventually be issued covering all telecommunications carriers. However, this Final Notice of Capacity should be viewed as the first phase applicable to telecommunications carriers offering services that are of most immediate concern to law enforcement – that is, those telecommunications carriers offering local exchange services and certain commercial mobile radio services, specifically cellular service and personal communications service (PCS).* For the purpose of this notice, PCS is considered a service operating in the

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initially on two-way voice systems. One reason is that, through the use of clone pagers, traditional paging systems satisfy the intent of the requirements of Section 103 of CALEA today. Paging carriers already provide law enforcement with the maximum assistance capability that would be realistically expected from these messaging systems. However, absent a capability and capacity standard for paging, narrowband PCS and SMR, an extension of time to establish and comply with the Section 103 capability requirements is necessary.

B. CALEA Compliant Equipment For Advanced Paging, Narrowband PCS and SMR Will Not Be Available To PageNet By The October 25, 1998 Deadline

Without a final CALEA capability and capacity standard, neither PageNet nor the manufacturers of paging, narrowband and PCS or SMR equipment have a benchmark by which to measure compliance. Because of the significant expense, equipment vendors cannot be expected to develop additional assistance capabilities until the final CALEA standard has been established. Depending upon the required capabilities for advanced paging, narrowband PCS and SMR, it may take manufacturers several years to develop and implement CALEA compliant equipment. Until a standard is set and equipment is developed, PageNet will not be able to fully comply with the Section 103 assistance capability requirements and it is not reasonably achievable for PageNet to do so. As such, because PageNet cannot comply with assistance capability requirements of Section 103 through application of technology available within the compliance period, it is entitled to an extension under Section 107(c) of CALEA.

(...continued)

licensed portion of the 2 GHz band of the electromagnetic spectrum, from 1850 MHz to 1990 MHz.

Final Capacity Notice, 63 FR 12218, 12220 (1998) (emphasis added). This passage reflects the fact that law enforcement apparently wishes to implement capability standards in phases starting with two-way voice.

C. Additional Evaluation Criteria For An Extension Under The Reasonably Achievable Standard

In the Commission's rulemaking notice related to CALEA implementation, the Commission did not propose specific criteria for an evaluation of a Section 107(c) extension requests.⁷ However, the Commission did propose to permit carriers to file for extensions under Section 107(c) using the specific criteria in Section 109 of CALEA.⁸ 47 U.S.C. § 1008(b)(1). Although not all of the Section 109 factors are relevant to this Petition,⁹ a discussion of the effects of an extension on: (1) public safety and national security; (2) competition and the provision of new technologies and services; and (3) the nature and cost of the equipment, facility of service at issue, and the financial resources of the telecommunications may assist the Commission in its of evaluation this extension request.

1. Public Safety

The public safety and national security will not be compromised by the grant of the instant Petition. PageNet will continue to provide law enforcement -- pursuant to legal authorization -- with the assistance capabilities present in its networks. Therefore, even though PageNet requires an extension of time to be fully compliant with Section 103 of CALEA, in further support of public safety and national security, PageNet will continue to assist law enforcement within its present network capabilities.

⁷ *Notice of Proposed Rulemaking*, CC Docket No. 97-213, released October 10, 1997 at ¶ 50.

⁸ *Id.*

⁹ The Section 109 factors appear to anticipate that an assistance capability standard has in fact been established.

2. Competition

Failure to extend the CALEA deadline will have a substantial adverse impact on competition. Specifically, if this extension and others like it are not granted, all carriers will be unable to introduce new services, or undertake upgrades of existing networks. Specifically, pursuant to CALEA, new services and major upgrades to networks must be CALEA compliant. This means that, absent extensions for compliance, competition in the telecommunications marketplace will be stunted because of the inability of carriers to implement new services and networks because such services and networks may not be CALEA compliant. Such a significant impact on competition mandates that the requested extension be granted.

3. Financial Resources Of The Carrier

With respect to the nature and the cost of the equipment, facility or services at issue and the financial resources of the telecommunications carrier, until a CALEA standard is adopted for all of PageNet's systems and services, manufacturers cannot develop CALEA-compliant technology. This means that no amount of money could bring all of the PageNet networks and services into compliance by the October 25, 1998 deadline.

IV. The Commission Must Expressly Toll Actions And Penalties During The Pendency Of This Extension Request

The absence of a final Section 103 assistance capability standard does not alone relieve telecommunications carriers of their obligations under CALEA. This fact exposes carriers to significant risk because Section 108 of CALEA permits the Attorney General to seek an order in the Federal District Court to enforce CALEA and authorizes penalties of \$10,000 per day, per violation. See 47 U.S.C. § 1007 and 18 U.S.C. § 2522. Because PageNet could be subject to enforcement actions and significant daily monetary forfeitures, for the reasons stated herein, PageNet expressly requests that the Commission toll CALEA compliance during the pendency of

this petition in the event the Commission's evaluation of this request extends beyond the October 25, 1998 deadline.

V. Conclusion

For the reasons stated in this Petition, PageNet respectfully requests a two-year extension of the CALEA compliance date for its traditional paging, advanced paging, narrowband PCS, and SMR systems and services effective on or before October 25, 1998.

Respectfully submitted,

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